

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121483-001

UnitedHealthcare Insurance Company

Respondent

Issued and entered
this 27TH day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On May 19, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Petitioner receives health benefits under a health benefit plan underwritten by UnitedHealthcare Insurance Company (United).

The Commissioner notified United of the external review and requested the information used in making its adverse determination. On May 20, 2011, United furnished the requested information. After a preliminary review of the material submitted, the Commissioner accepted the request for external review on May 26, 2011.

The case involves a medical issue so the Commissioner assigned the matter to an independent review organization, which submitted its analysis and recommendation to the Commissioner on June 9, 2011. (A second report correcting a numerical error was submitted on October 19, 2011.)

II. FACTUAL BACKGROUND

The Petitioner has a history of gastroesophageal reflux disease (GERD) and asthma. Since 2008, Petitioner has been taking 40 mg of Nexium daily to control her GERD.

United denied coverage for Petitioner's Nexium, ruling that an over-the-counter equivalent is available to treat her condition. Petitioner appealed the denial through United's

internal grievance process. United issued its final adverse determination dated May 10, 2011, upholding its original determination.

III. ISSUE

Did United correctly deny coverage for Nexium under the terms of the certificate of coverage?

IV. ANALYSIS

The Petitioner's request for external review notes that she has been taking Nexium since 2008 and it has controlled her GERD. If the GERD is not controlled, the Petitioner's asthma flares up. Petitioner's physician also provided a list of medications Petitioner has been prescribed since 2007, along with medical records related to her treatment in recent years for GERD and asthma.

The Petitioner's prescription drug rider includes the following provision:

Section 2: Exclusions

Exclusions from coverage listed in the *Certificate of Coverage* apply also to this Rider, except that any preexisting condition exclusion in the *Certificate of Coverage* is not applicable to this Rider. In addition, the following exclusions apply:

* * *

18. . . . Prescription Drug Products that are available in over-the-counter form or comprised of components that are available in over-the-counter form or equivalent. Certain Prescription Drug Products that we have determined are Therapeutically Equivalent to an over-the-counter drug. Such determinations may be made up to six times during a calendar year, and we may decide at any time to reinstate Benefits for a Prescription Drug Product that was previously excluded under this provision.

In its May 10, 2011, final adverse determination, United explained its denial of coverage:

Nexium is not covered under your prescription benefit because our National Pharmacy & Therapeutics Committee has determined that Nexium is therapeutically equivalent to an over-the-counter drug, Prilosec OTC.

The question of whether Prilosec OTC is therapeutically equivalent to Nexium for the treatment of Petitioner's condition was presented to an independent medical review organization (IRO) for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO reviewer is board certified in internal medicine and gastroenterology. The reviewer holds an academic

appointment and has been in active practice for more than 15 years. The IRO reviewer's report includes the following comments:

. . . Prilosec over the counter contains 20.6 mg of omeprazole, which would be roughly equivalent to Nexium 20 mg. . . . [A] double dose of Prilosec would likely be equivalent to Nexium 40 mg. . . . [T]here is no evidence that the member has tried other formulary proton pump inhibitors, such as lansoprazole or pantoprazole.

The reviewer concluded that, based on the information submitted by the parties, Nexium is not medically necessary for treatment of the Petitioner's condition, given the availability of other, nonprescription, medications.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a final order which rejects an IRO recommendation, the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise and professional judgment, and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The Commissioner finds that United's denial of coverage for Nexium is consistent with the terms of the Petitioner's certificate.

V. ORDER

The Commissioner upholds UnitedHealthcare Insurance Company's final adverse determination of May 10, 2011. United is not required to provide Petitioner with coverage of Nexium.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.